

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY MAY 3, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2535

Introduced by Assembly Member Blakeslee

February 19, 2010

An act to amend ~~Section~~ *Sections 10089.11 and 10089.16* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2535, as amended, Blakeslee. Insurance: California Earthquake Authority.

Existing law authorizes the California Earthquake Authority, administered under the authority of the ~~commissioner~~ *Insurance Commissioner*, to transact basic residential earthquake insurance. Existing law authorizes the governing board of the authority to take certain actions to open the authority to participation by insurers, who have not elected to participate in the authority by contributing the required operating capital, in order to act upon findings and recommendations reported to the Legislature or to implement a specific finding by the commissioner or the board that modification of the requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance. Any action by the board, to act upon findings and recommendations reported to the Legislature or to implement a specific finding by the commissioner or the board that modification of requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance, is subject to certain

limitations, including, but not limited to, a finding of necessity, as specified. All materials and documents prepared or used by the authority to make a finding of necessity, other than proprietary materials and documents owned or licensed by ~~third~~ 3rd parties, are considered public documents and are required to be made available to the public.

This bill would require the authority to make all nonproprietary materials and documents available in the electronic form in which it holds the information or which has been used by the authority to create copies for its own use or for provision to others.

Existing law requires that all materials and documents prepared or used by the authority to determine its rates, other than proprietary materials and documents owned or licensed by 3rd parties, are considered public documents and are required to be made available to the public.

This bill would require the authority to make all nonproprietary materials and documents available in the electronic form in which it holds the information or which has been used by the authority to create copies for its own use or for provision to others.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10089.11 of the Insurance Code is
2 amended to read:
3 10089.11. (a) The commissioner shall adopt regulations to
4 implement the provisions of this chapter within 60 days of its
5 effective date. The regulations shall be adopted as emergency
6 regulations in accordance with Chapter 3.5 (commencing with
7 Section 11340) of the Government Code, and for the purposes of
8 that chapter, including Section 11349.6 of the Government Code,
9 the adoption of the regulations shall be considered by the Office
10 of Administrative Law to be necessary for the immediate
11 preservation of the public peace, health and safety, and general
12 welfare.
13 (b) Regulations shall specify procedures for ratemaking and
14 forms approval, define the type and quality of investments the
15 authority is authorized to make, define coverage types and limits,
16 set forth producer compensation rates, and specify the procedures
17 to be followed by the authority following any earthquake event

1 where the magnitude of earthquake losses make it likely that
2 prorated benefits may be paid. The regulations shall be consistent
3 with the requirements of Proposition 103.

4 (c) The rights provided by Section 1861.10 shall apply to
5 proceedings under this chapter relating to establishing rates and
6 regulations for earthquake insurance sold by the authority.

7 (d) All materials and documents prepared or used by the
8 authority to determine its rates other than proprietary materials
9 and documents owned or licensed by third parties shall be
10 considered public documents, and copies of the public documents
11 shall be made available to the public for inspection at no charge.
12 Members of the public may purchase public ratemaking related
13 documents from the authority at actual cost. *The authority shall*
14 *make all nonproprietary materials and documents available in the*
15 *electronic form in which it holds the information or which has*
16 *been used by the authority to create copies for its own use or for*
17 *provision to others.*

18 **SECTION 1.**

19 **SEC. 2.** Section 10089.16 of the Insurance Code is amended
20 to read:

21 10089.16. (a) On application to the board, payment of any
22 assessments and fees calculated by the board, and fulfillment of
23 any additional requirements imposed by the board, nonparticipating
24 insurers may become participants in the authority with all rights
25 and privileges attendant to that participation.

26 (b) In order to act upon any findings and recommendations
27 reported to the Legislature pursuant to Section 10089.13, or to
28 implement a specific finding by the commissioner or the board
29 that modification of requirements for entry into the authority is
30 necessary to broaden the availability of residential property or
31 residential earthquake insurance, the board is authorized to open
32 the authority to participation by insurers who have not elected to
33 participate in compliance with Section 10089.15. In implementing
34 the authority granted by this section, the board may:

35 (1) Offer incentives for insurers to participate in the authority.

36 (2) Allow any insurer or insurer group that has not elected to
37 become a participating insurer to become an associate participating
38 insurer without complying with the capital contribution
39 requirements of Section 10089.15 if it has maintained or exceeded

1 its number of policies of residential property insurance written as
2 of January 1, 1996.

3 (c) Any action by the board pursuant to subdivision (b) shall be
4 subject to the following conditions and limitations:

5 (1) Any deliberation and action by the board shall be conducted
6 at a public meeting of the board.

7 (2) No action may be taken within one year of the date upon
8 which the authority begins writing policies of basic residential
9 earthquake insurance.

10 (3) The board shall have no authority to modify the requirements
11 of Section 10089.23, 10089.30, or 10089.31, or to provide, in any
12 other manner, for reduction of the liability of an insurer or insurer
13 group to comply with the assessments placed upon participating
14 insurers in the event of a loss.

15 (4) Notwithstanding Section 10089.11, any action of the board
16 pursuant to subdivision (b) shall be by regulation promulgated by
17 the board. Notwithstanding any other provision of law, there shall
18 be no authority by the board to promulgate emergency regulations
19 to implement subdivision (b). No regulations may be proposed
20 within one year of the date upon which the authority begins writing
21 policies of basic residential earthquake insurance. Notwithstanding
22 any exception provided in Section 11343 of the Government Code,
23 any regulation adopted pursuant to subdivision (b) shall be
24 submitted to the Office of Administrative Law for approval
25 pursuant to the Administrative Procedure Act (Chapter 3.5
26 (commencing with Section 11340) of Part 1 of Division 3 of Title
27 2 of the Government Code).

28 (5) Any action by the board to establish an incentive pursuant
29 to subdivision (b) that is available to a single insurer or insurer
30 group shall be based upon standards adopted by the board that are
31 not arbitrary or discriminatory. Notwithstanding Section 10089.11,
32 these standards shall be established by regulation promulgated by
33 the board.

34 (6) A finding of necessity pursuant to subdivision (b) shall state
35 the specific facts and conditions that establish the necessity and
36 justify the actions to implement subdivision (b). All materials and
37 documents prepared or used by the authority to determine the
38 necessity to implement subdivision (b), other than proprietary
39 materials and documents owned or licensed by third parties, shall
40 be considered public documents, and copies of the public

1 documents shall be made available to the public for inspection at
2 no charge. Members of the public may purchase copies of these
3 documents from the authority at actual cost. The authority shall
4 make all nonproprietary materials and documents available in the
5 electronic form in which it holds the information or which has
6 been used by the authority to create copies for its own use or for
7 provision to others.

8 (d) (1) A nonparticipating insurer that applies to the board to
9 become an authority participant shall submit to the authority, in
10 connection with its application, earthquake insurance policy data
11 sufficient for the authority to ascertain through computer modeling
12 the current likelihood and magnitude of earthquake insurance
13 losses that would be attributable to that insurer's book of
14 earthquake insurance business during its first full year of authority
15 participation. The authority's modeled representation of such
16 insured earthquake losses shall be termed the "earthquake insurance
17 risk profile" of that insurer.

18 (2) If in the board's sole judgment the earthquake insurance risk
19 profile the nonparticipating insurer would bring to the authority
20 would be more likely to produce losses for the authority, or would
21 be likely to produce greater losses for the authority, than would a
22 book of existing authority business of similar size, the board may
23 require as a condition for approving the insurer's application that
24 the insurer pay up to five annual risk capital surcharges into the
25 authority in addition to any capital contribution required by Section
26 10089.15 and any assessment obligations required by Sections
27 10089.23, 10089.30, and 10089.31.

28 (3) The board shall first calculate the nonparticipating insurer's
29 risk capital surcharge as of the first anniversary of the date the
30 insurer first placed or renewed into the authority earthquake
31 insurance policies. The board shall recalculate the risk capital
32 surcharge for each of up to four years after the first year of
33 calculation and shall impose the resulting surcharge; if the insurer's
34 earthquake insurance risk profile becomes substantially similar to
35 the authority's average risk profile for a book of authority
36 earthquake insurance business of similar size, the board shall
37 relieve the insurer of any further obligation to pay risk capital
38 surcharges.

39 (4) Each annual risk capital surcharge shall be in an amount
40 that, in the board's determination, is equal to the authority's

1 increased cost of providing capacity to insure that insurer's excess
2 earthquake insurance risk. The authority shall cause to be sent to
3 each such insurer a notice of that insurer's annual risk capital
4 surcharge.

5 (5) Full payment of a noticed risk capital surcharge shall be due
6 within 30 days and shall be overdue after 30 days. Penalties and
7 interest shall be assessed for late payments in the same manner as
8 provided for late payments of the insurer gross premium tax
9 provided for in Section 12258 of the Revenue and Taxation Code.
10 The board may waive the penalties and interest for good cause
11 shown.

12 (e) Associate participating insurers shall place all new policies
13 of residential earthquake insurance, when writing new policies of
14 residential property insurance, into the authority. Insurers placing
15 policies with the authority under this section shall be subject to
16 the assessments provided for in Sections 10089.23, 10089.30, and
17 10089.31. Notwithstanding subdivision (m) of Section 10089.5,
18 "residential earthquake insurance market share" for purposes of
19 any assessments pursuant to Sections 10089.23, 10089.30, and
20 10089.31 levied on an associate participating insurer shall mean
21 an individual associate participating insurer's total direct premium
22 received for residential earthquake policies written or renewed by
23 the authority for which the insurer has written or renewed an
24 underlying policy of residential property insurance, divided by the
25 total gross premiums received by all admitted insurers and the
26 authority for their basic residential earthquake insurance in
27 California.

28 (f) (1) An associate participating insurer shall not cancel or
29 refuse to renew a residential property insurance policy existing on
30 the date it elected to become an associate participating insurer after
31 an offer of earthquake coverage is accepted solely because the
32 insured has accepted that offer of earthquake coverage.

33 (2) An associate participating insurer shall maintain in force
34 any policy of residential property insurance existing on the date it
35 elected to become an associate participating insurer after an offer
36 of earthquake insurance has been accepted, unless the policy is
37 properly canceled pursuant to Section 676 or the associate
38 participating insurer has grounds for nonrenewal pursuant to
39 subdivision (g).

1 (g) An associate participating insurer may refuse to renew a
2 policy of residential property insurance after an offer of earthquake
3 coverage has been accepted if one of the following exceptions
4 applies:

5 (1) The policy is terminated by the named insured.

6 (2) The policy is refused renewal on the basis of sound
7 underwriting principles that relate to the coverages provided by
8 the underlying policy of residential property insurance and that
9 are consistent with the approved rating plan and related documents
10 filed with the department as required by existing law.

11 (3) The commissioner finds that the exposure to potential losses
12 will threaten the solvency of the associate participating insurer or
13 place the associate participating insurer in a hazardous condition.
14 “Hazardous condition” has the same meaning as in Section 1065.1
15 and includes, but is not limited to, a condition in which an associate
16 participating insurer makes claims payments for losses resulting
17 from an earthquake that occurred within the preceding two years
18 and that required a reduction in policyholder surplus of at least 25
19 percent for payment of those claims.

20 (4) There is cancellation under Section 676.

21 (5) The associate participating insurer has lost or experienced
22 a substantial reduction in the availability or scope of reinsurance
23 coverage or a substantial increase in the premium charged for
24 reinsurance coverage for its residential property insurance policies,
25 and the commissioner has approved a plan for the nonrenewals
26 that is fair and equitable, and that is responsive to the changes in
27 the associate participating insurer’s reinsurance position.

28 (6) The named insured is insured based upon membership in a
29 motor club, as defined in Section 12142, and the membership in
30 that organization is terminated as provided in paragraph (2) of
31 subdivision (c) of Section 1861.03.

32 (h) For associate participating insurers, underwriting standards
33 applicable to residential property insurance shall not be applied in
34 an unfairly discriminatory fashion against any person who accepts
35 or elects to continue earthquake coverage.

36 (i) Associate participating insurers shall be subject to the
37 following requirements:

38 (1) Associate participating insurers shall conform to all
39 provisions of the authority’s plan of operation applicable to
40 participating insurers.

1 (2) No property that has previously been covered by a policy
2 of residential earthquake insurance written by the associate
3 participating insurer or associate participating insurer group, absent
4 at least one full policy year with an insurer not affiliated with the
5 associate participating insurer or its group, may be placed into the
6 authority by an associate participating insurer.

7 (3) Any associate participating insurer or associate participating
8 insurer group defined in paragraph (2) of subdivision (b) that has
9 failed to maintain or exceed the number of policies of residential
10 property insurance in force on January 1, 1996, may become an
11 associate participating insurer by contributing additional capital
12 into the authority at a rate to be established by the board, which
13 shall be a per policy rate comparable to the average cost per policy
14 paid by a participating insurer that joins the authority pursuant to
15 Section 10089.15.

16 (j) Any associate participating insurer shall be required to
17 establish procedures to verify compliance with this section. The
18 procedures shall require verification that each basic residential
19 earthquake policy written by the authority complies with paragraph
20 (2) of subdivision (i).

21 (k) Any violation of this section may be enforced as a violation
22 of the Unfair Trade Practices Act (Article 6.5 (commencing with
23 Section 790) of Chapter 1 of Part 2 of Division 1). Each policy of
24 basic residential earthquake insurance written in the authority by
25 an associate participating insurer in violation of this section shall
26 be deemed to be a separate violation of the Unfair Trade Practices
27 Act.

28 (l) For purposes of this section, no insurer or associate
29 participating insurer may participate in the authority unless all
30 affiliated insurers participate in the authority.

31 (m) Policies of basic residential earthquake insurance written
32 by associate participating insurers shall be subject to assessment
33 by the California Insurance Guarantee Association and shall be
34 covered to the extent provided in Article 14.2 (commencing with
35 Section 1063) of Chapter 1 of Part 2 of Division 1. Except as
36 provided in Section 10089.34, insurance policies written by
37 participating insurers that are not associate participating insurers
38 shall not be subject to assessment by the California Insurance
39 Guarantee Association if the assessment is imposed to pay claims

- 1 covered by policies of basic residential earthquake insurance
- 2 written by an associate participating insurer.

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